

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:

W. R. GRACE & CO.,

Debtor(s).

Edythe Kellogg,

Movant,

v.

W. R. Grace & Co.,

Respondent.

Case No. 01-01139 JKF
Chapter 11

Objections Due: March 11, 2002

Hearing Date: March 18, 2002
Hearing Time: 10:00 a.m.

**NOTICE OF MOTION TO ANNUL
THE AUTOMATIC STAY
BY
Edythe Kellogg**

TO: SEE SERVICE LIST ATTACHED.

Edythe Kellogg has filed a Motion for Relief from Stay which seeks the following relief:

EDYTHE KELLOGG (hereinafter "KELLOGG") will move the court for an order annulling the automatic stay with respect to proceeding to liquidation of a litigation claim entitled EDYTHE KELLOGG vs. WAYNE LAMAR NUSSBAUM and W.R. GRACE CO., Case No. 01AS07626 (hereinafter "the Litigation") now pending in the Superior Court for the county of Sacramento, California as more specifically discussed in the accompanying Motion To Annul The Automatic Stay (hereinafter "Motion") and supporting documentation and evidence which is filed and served herewith and incorporated herein by this reference. Pursuant to the Motion, KELLOGG seeks an order annulling the automatic stay pursuant to the provisions of 11 U.S.C. Sec. 362 as more fully set forth in the Motion and supporting documents enclosed herewith.

HEARING ON THE MOTION WILL BE HELD ON MARCH 18, 2002 at 10:00 A.M.

ANY RESPONSE MUST BE FILED AND SERVED TOGETHER WITH A

**CERTIFICATE OF SERVICE ON OR BEFORE MARCH 11, 2002. FAILURE TO
TIMELY FILE AND SERVE A RESPONSE WILL RESULT IN AN ORDER
GRANTING THE RELIEF REQUESTED IN THE MOTION.**

At the same time, you must serve a copy of the response upon local counsel and movant's attorney:

PATRICK SCANLON
Barros, McNamara, Scanlon, Malkiewicz & Taylor, P.A.
2 W. Loockerman Street
P.O. Box 1298
Dover, DE 19903

LAW OFFICES OF JOHN M. O'DONNELL
2100 Northrop Avenue, Suite 800
Sacramento, California 95825

The hearing date specified above may be a preliminary hearing or may be consolidated with the final hearing, as determined by the Court.

The attorneys for the parties shall confer with respect to the issues raised by the motion in advance for the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as value of the property, and the extent and validity of any security instrument.

BARROS, MCNAMARA, SCANLON,
MALKIEWICZ & TAYLOR, P.A.

BY: 

PATRICK SCANLON
Bar I.D. #12
Attorneys for KELLOGG
2 W. Loockerman Street
P.O. Box 1298
Dover, Delaware 19903

DATED:

FEB 07 2002

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7 Attorneys for EDYTHE KELLOGG

8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF DELAWARE**

10
11 W.R. GRACE & CO.,) CASE NO. 01-01139 JKF
12 Debtor.)
13) **OBJECTION DATE: MARCH 11, 2002**
14) **HEARING DATE: MARCH 18, 2002**
15) **HEARING TIME: 10:00 A.M.**

16 **MOTION TO ANNUL THE AUTOMATIC STAY**

17 EDYTHE KELLOGG. (hereinafter "KELLOGG") files this Motion To
18 Annul The Automatic Stay in the pending Chapter 11 proceeding
19 commenced by W.R. GRACE & CO. (hereinafter "Debtor") as follows:

20 1. The Debtor commenced this voluntary Chapter 11 proceeding
21 on or about April 2, 2001. There has not yet been a plan confirmed
22 in this case.

23 2. KELLOGG's claim against the Debtor arises from an
24 automobile accident which occurred on December 21, 2000, in
25 Sacramento, California. One of the Debtor's employees, Wayne Lamar
26 Nussbaum, injured the Plaintiff in a motor vehicle accident during
27 the course and scope of his employment for the Debtor.

28 3. There is currently pending litigation entitled EDYTHE
KELLOGG vs. WAYNE LAMAR NUSSBAUM and W.R. GRACE CO., Case No.

1 01AS07626 (hereinafter "the Litigation") now pending in the Superior
2 Court for the county of Sacramento, California. The Litigation was
3 commenced on December 13, 2001, which is subsequent to commencement
4 of the Debtor's Chapter 11 proceeding. KELLOGG was unaware of the
5 commencement of the Chapter 11 proceeding until so advised by the
6 Debtor's counsel. Attached hereto as Exhibit "A" and incorporated
7 herein by this reference is a copy of the Complaint For Damages
8 (hereinafter "Complaint") filed against the Debtor and its employee
9 on December 13, 2001.

10 4. KELLOGG seeks to have the automatic stay annulled with
11 respect to commencement of the Litigation, the filing of which is
12 rendered void by the provisions of 11 U.S.C. Sec. 362.

13 5. KELLOGG seeks relief from the automatic stay to permit her
14 to proceed against the Debtor's insurance policy which covers
15 liabilities such as that to KELLOGG. Specifically, KELLOGG seeks
16 authorization to liquidate her claim against the Debtor in the
17 Litigation which is pending, and enforce any rights which she may
18 have against the not estate assets provided by insurance coverage.

19 6. It will not interfere with the administration of this
20 estate to grant KELLOGG the limited relief requested.

21 7. As set forth in the Declaration of Glenn Guenard in Support
22 of Motion To Annul the Automatic Stay (hereinafter "Guenard
23 Declaration") which is filed and served herewith and incorporated
24 herein by this reference, KELLOGG's interests are subject to
25 substantial jeopardy as a result of the continuation of the automatic
26 stay in this case. KELLOGG is 82 years old. KELLOGG was severely
27 injured in the automobile accident and requires 24 hour per day care
28 and assistance in living. KELLOGG's injuries sustained as a result

1 of the automobile accident have effectively disabled her to the
2 extent that it is imperative that she have recourse against the
3 Debtor's insurance policy to pay the medical bills incurred as a
4 result of the accident.

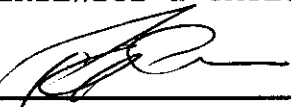
5 8. The interests of KELLOGG are not adequately protected in
6 these proceedings due to the continuation of the automatic stay upon
7 filing of the bankruptcy with respect to the insurance policy
8 maintained by the Debtor for coverage of liabilities such as that
9 asserted by KELLOGG.

10 9. It is necessary and appropriate for this court to enter an
11 order immediately annulling the automatic stay to validate the filing
12 of the Litigation and modifying the automatic stay to allow KELLOGG
13 to exercise any and all rights she has under applicable state law
14 against the Debtor's insurance policy coverage for this event.

15 **WHEREFORE**, KELLOGG FINANCIAL CORP. respectfully requests that
16 this court enter an order immediately annulling the automatic stay
17 to validate the filing of the Litigation and modifying the automatic
18 stay to allow KELLOGG to exercise any and all rights she has under
19 applicable state law against the Debtor's insurance policy coverage
20 for this event.

21 Dated: Feb 7, 2002

BARROS, McNAMARA, SCANLON,
MALKIEWICZ & TAYLOR

22
23 By 
24 Patrick Scanlon
25 Bar I.D. #12
26 Attorneys for Creditor
27 EDYTHE KELLOGG
28

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WAIVER

Edythe Kellogg, Movant, hereby waives its right to have the Motion for Relief from Stay heard within the 30 day time period required by 11 U.S.C. §362.

BARROS, MCNAMARA, SCANLON,
MALKIEWICZ & TAYLOR, P.A.

BY:

PATRICK SCANLON

Bar I.D. #12

Attorneys for Movant

2 W. Loockerman Street

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DATED: FEB 07 2002

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ORDER

AND NOW, to wit, this ____ day of _____, 2002, having
heard and considered the Motion for Relief from Stay filed by KELLOGG,

IT IS HEREBY ORDERED, that the stay pursuant to 11 U.S.C., Section 362(d) shall be
modified to permit the Movant to validate the filing of the Litigation and to allow KELLOGG to
exercise any and all rights she has under applicable state law against the Debtor's insurance
policy coverage for this event.

Judge

cc SEE SERVICE LIST ATTACHED.

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